

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14829 of E. Fulton Brylawski, pursuant to 11 DCMR 3108.1, for a special exception under Sub-section 2003.1, to change a nonconforming use, lawyers and professional offices, to lawyers, professional offices and the offices of the American Cancer Society, all floors, in a CAP/R-4 District at premises 224 East Capitol Street, N.E., (Square 759, Lot 804).

HEARING DATE: July 27, 1988
DECISION DATE: September 7, 1988

FINDINGS OF FACT:

1. The subject property is located on the north side of East Capitol Street between 2nd and 3rd Streets, N.E. The site is known as premises 224 East Capitol Street, N.E. and it is located in a CAP/R-4 District.

2. The site is improved with a three-story structure which has a floor area of 4,010 square feet.

3. The general area is characterized by a mix of residential, institutional and commercial office uses.

4. The subject property has a long history of nonconforming use. In Appeal No. 4629, by order dated November 29, 1956, the Board authorized a change of nonconforming use of the property from a tailoring establishment to "lawyer and professional offices". The change in use also involved major interior structural alterations. Pursuant to that approval, the District of Columbia issued Certificate of Occupancy No. B-12422 on September 16, 1958, to allow for the use of the premises for lawyer and professional offices. Over the past 30 years, the building has been used by a law firm and various professionals. The most recent use of the building involved a law firm with a total staff of approximately 24 persons. In 1987, the law firm relocated to a larger building.

5. On February 5, 1987, the Zoning Administrator issued Certificate of Occupancy B-148577 to the American Cancer Society to use the premises for its offices, after concluding that this use would be consistent with the previous BZA Order. In Appeal No. 14558, the Capitol Hill Restoration Society challenged the decision of the Zoning Administrator to issue the Certificate of Occupancy, arguing

that the use of the premises by the American Cancer Society did not fall within the scope of the original BZA order. In Order No. 14558 dated July 27, 1987, the Board of Zoning Adjustment granted the appeal of the Capitol Hill Restoration Society.

6. The applicant is requesting a special exception to allow the property to be used as offices for lawyers, other professionals and offices of the American Cancer Society (A.C.S.). The applicant is required to meet the special exception provisions of Section 3108.1. Additionally, the applicant must meet the requirements of Section 2003 governing changing uses within structures.

7. Section 3108.1 of the Zoning Regulations authorizes the Board to grant special exceptions where, in the judgment of the Board, granting the relief will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Maps.

8. Section 2003.1 of the Zoning Regulations provides that a nonconforming use may be changed to a use which is permitted as a matter-of-right in the most restrictive district in which the existing nonconforming use is permitted as a matter-of-right, if:

- a. The proposed use will not adversely affect the present character or future development of the surrounding area in accordance with the Zoning Regulations. The surrounding area encompasses the existing uses and structures within at least 300 feet in all directions from the nonconforming use. (Section 2003.2).
- b. The proposed use will not create any deleterious external effects, including but not limited to, noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects. (Section 2003.3).
- c. The proposal does not involve the change of a conforming or more restrictive use back to a nonconforming or less restrictive use. (Section 2003.4).
- d. In residential districts, the proposed use shall be a dwelling, flat, apartment house or a neighborhood facility. (Section 2003.5).
- e. The Board may require the provision of or direct changes, modifications, or amendments to any design, plan, screening, landscaping, type of

lighting, nature of any sign, pedestrian or vehicular access, parking and loading, hours of operation or other restriction or safeguard it may deem necessary to protect the value, utilization, or enjoyment of property in the neighborhood. (Section 2003.7).

9. The American Cancer Society, a tenant of the applicant, has used the subject premises as office space for the past year and one-half.

10. The existing and proposed uses are first permitted as a matter-of-right in the C-1 District.

11. The American Cancer Society testified that the proposed use will not adversely affect the neighborhood because of its extremely limited and unobtrusive nature. The office will employ only seven persons and will expand to no more than 10 employees. Twenty-four employees were formerly housed in the building when used for law offices. The proposed hours of operation are 9:00 A.M. to 5:00 P.M., Monday through Friday.

12. The applicant testified that the existing uses in the vicinity are a mixture of row houses, churches, and a number of nonconforming uses.

13. The applicant's traffic engineer testified that the current traffic operating conditions are at the "A" level of service at nearby intersections and that the public transportation serving the area is good. He further indicated that with seven employees, three parking spaces would be required. If the staff expanded to 10, four spaces would be needed. There are presently 5 parking spaces located at the rear of the site. Finally, the traffic consultant concluded that the trips generated by this use will have no effect on the current traffic operating conditions.

14. The applicant testified that the use was nonconforming prior to the enactment of the Zoning Regulations and the building has maintained a nonconforming use since that time. The subject application, therefore, does not involve the conversion of a conforming use back into a nonconforming use.

15. The American Cancer Society testified that being able to locate on Capitol Hill would facilitate its service to the community and also offer access to other organizations and particularly Congress.

16. The Executive Director of the American Cancer Society testified about the activities of the organization.

She stated that the American Cancer Society performs a community service by providing practical help and emotional support for cancer patients. She indicated that residents from the community volunteer to provide a wide variety of services to the patients in the community, depending on their needs. The volunteers provide information regarding American Cancer Society services, community health services and resources that enable them to acquire sick room supplies and special items for home-bound patients such as hospital beds, wheelchairs and surgical dressings. They also transport patients to and from the office, clinics and hospitals for diagnosis and treatment. Food supplements are also provided for these patients.

17. The American Cancer Society indicated that the building contains several large areas, including a video tape library and conference room, that are used by the members of the community in connection with cancer programs. The building can accommodate the smaller programs while the larger programs are held at either of two hospitals in the area - D.C. General and Capitol Hill Hospital. These two hospitals work directly with the American Cancer Society in educating the public on specific forms of cancer and preventive measures. The wide range of programs offered by the American Cancer Society are advertised throughout the community through neighborhood newspapers, fliers and door-to-door notices. The American Cancer Society supports 2,500 cancer patients on Capitol Hill. The Vice President of Public Affairs of the American Cancer Society testified that these services cannot be provided to this community from an office building downtown.

18. In addition to educating the general community, the American Cancer Society wishes to be located on Capitol Hill to educate public officials and their staff on cancer related matters so that these Congressional representatives can answer the questions of their constituents.

19. The American Cancer Society further testified that because cancer has become a national issue, laws are passed and regulations are promulgated that directly affect cancer patients. Part of the American Cancer Society's obligation is to promote cancer research and legislation, as well as disseminate new legislative information throughout the organization so that those who serve on the community level are up to date and better able to serve their constituencies.

20. The American Cancer Society testified regarding the members of the staff. There are four professional employees housed at the Capitol Hill location. They are the Vice-President for Public Affairs, the Director of Government Relations, a Legislative Assistant and the Coordinator of Public Issues. Professional staff members

from the Rhode Island Avenue unit and the Martin Luther King, Jr. Avenue unit conduct periodic therapy sessions and educational programs in the conference rooms at the Capitol Hill location, however they are not housed there. The remaining three of the seven employees who are permanently located at the Capitol Hill office are logistical staff. They are responsible for the organization and community development of the different neighborhoods that are located in all of the Northeast and Southeast areas of the District of Columbia. They provide support for the professional employees who work at the site.

21. The American Cancer Society testified that all of the employees contribute to the service of the community, that they cannot be separated according to those who lobby Congress and those who perform community service.

22. The Board finds that the services performed by the American Cancer Society at the East Capitol Street Office extend beyond the immediate Capitol Hill community. The Board finds that the American Cancer Society's involvement with Congress and its coordination of programs in other areas of the city dilute the argument that the focus is on serving the residents of Capitol Hill. Responding to the applicant's assertion that Congress has been deemed part of the Capitol Hill community for purposes of locating neighborhood facilities, the Board finds that the Congress serves a national community on cancer-related issues, and its interests are not focused only on the residents of Capitol Hill. Although some of the American Cancer Society employees work directly with the community, the Board is concerned that some other staff members are not so clearly focused on the Capitol Hill area for the residents but for other attributes of Capitol Hill.

23. The applicant's real estate appraiser testified that there are numerous nonresidential uses in this residentially zoned area. He further indicated that to convert the subject property back to residential use would require extensive and costly renovations. He was of the opinion that such a conversion was unlikely to occur, that the building would most likely be used as offices for a law firm with the denser use that was previously maintained there.

24. The Board notes that the likelihood of conversion to a conforming use is not a factor in the subject case. The Board notes further that although the previous use was denser than that proposed, it was however approved by the Board.

25. The Office of Planning (OP), by report dated July 19, 1988, recommended denial of the subject application. In OP's opinion, the proposed use did not fit any of the

categories of permitted uses under Section 2003.5 - a dwelling, a flat, an apartment house or a neighborhood facility. The OP states that the American Cancer Society is an organization which serves the entire city and will be best located in a Special Purpose (SP) or Commercial (C) District rather than a Residential (R) District. It was OP's opinion that the proposal is inconsistent with the goals and mandates of the United States Congress set forth in the Master Plan for the future development of the Capitol grounds and related areas.

26. At the public hearing, after hearing the applicant's testimony, OP modified its opinion conditioning its approval of the application on whether the Board finds the use to be a neighborhood facility.

27. At the end of the public hearing, the Board left the record open to afford OP the opportunity to submit an amended report in light of the testimony received. The Board also allowed for responses from parties.

28. The Office of Planning submitted a supplemental report dated August 26, 1988 in which it noted its findings regarding the American Cancer Society staff and their activities at the site. OP indicated that there will be four professionals, two of which will lobby Congress 75 percent of the time. The other two will perform neighborhood related activities 25 percent of the time. There will be three support staff persons. One will work on lobbying 75 percent of the time, and the other two will spend 25 percent of their time serving the community. The remaining three employees will perform neighborhood-related activities 100 percent of the time and will be permanently housed at the East Capitol Street location. Based on this information, OP expressed the opinion that the proposed use is consistent with the meaning of neighborhood facility. OP therefore recommended approval of the application.

29. The Board is in accord with the initial opinion of the Office of Planning that the proposed office is not a neighborhood facility within the general meaning of that term.

30. Advisory Neighborhood Commission, (ANC) 6A, by report dated July 13, 1988, expressed its support for the subject application. The ANC noted the unlikelihood of the property being converted back to residential use. The ANC noted further that the American Cancer Society provides services to the surrounding community and is able to offer meeting space for community groups. The ANC expressed the view that the American Cancer Society has had a positive, rather than negative, impact on the community while located on Capitol Hill.

31. The Board does not deny that the services provided by the American Cancer Society are extremely valuable. The Board thoroughly appreciates the work that the American Cancer Society does to enhance the lives of cancer patients. The Board finds, however, that the work of the American Cancer Society office which is the subject of this application extends beyond the immediate Capitol Hill neighborhood so as to remove it from the category of "neighborhood facility" for purposes of the Zoning Regulations.

32. The Zoning Committee of the Capitol Hill Restoration Society (CHRS), by statement dated July 26, 1988, expressed opposition to the application. The CHRS adopted the Zoning Committee's opinion as the opinion of the Society as a whole. The CHRS was of the opinion that the applicant failed to demonstrate that its primary use is as a neighborhood facility, thereby failing to meet the requirements of the Zoning Regulations. The CHRS pointed out that the American Cancer Society provides service, not only to Capitol Hill residents, but to all of the Northeast and Southeast areas of the city. The CHRS was concerned that if the application were granted, the phrase "neighborhood facility" would be so broadly interpreted as to become meaningless.

33. The Board concurs with the opinion of the CHRS.

34. By letter dated May 23, 1988, the Architect of the Capitol expressed strong opposition to the application. In his opinion, the proposal is inconsistent with the Master Plan of the United States Capitol published in September 1981, which provides that the integrity of the Capitol Hill Historic District should be respected and that it should remain predominantly residential in character.

35. The Board is in accord with the opinion of the Architect of the Capitol.

36. Three persons testified in support of the application. Generally they noted that the American Cancer Society is a compliment rather than a detriment to the community and that they benefit from the services provided. However, one of the supporters used the Rhode Island Avenue unit instead of the Capitol Hill office because it is closer to his house.

37. Ten letters and a petition were submitted into the record in support of the application.

CONCLUSIONS OF LAW AND OPINION

Based on the foregoing Findings of Fact and evidence of record, the Board concludes that the applicant is seeking a

special exception to change a nonconforming use from lawyers and professional offices to lawyers and professional offices and offices of the American Cancer Society. The granting of such a special exception requires a showing through substantial evidence that the proposed use is in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property. The provisions of Section 2003 regulating changing uses within structures must also be complied with.

The Board concludes that the applicant has failed to meet this burden of proof. The Board is of the opinion that the American Cancer Society coordinates activities that help cancer patients and residents in the Capitol Hill area. However, the Board recognizes that the American Cancer Society is involved in lobbying and other activities which in effect serve those outside of the Capitol Hill community as well. The Board feels that the Capitol Hill office goes beyond what the Board deems to be service to the neighborhood. Therefore, the Board concludes that the proposed use is not a neighborhood facility within the meaning of that term under 11 DCMR 2003.5.


Although the proposed use would not tend to affect adversely the use of neighboring property, the Board is of the opinion that the proposed use is not in harmony with the general purpose and intent of the Zoning Regulations and Maps.

The Board concludes that the Advisory Neighborhood Commission has been given the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 4-0 (William F. McIntosh, Paula L. Jewell and Carrie L. Thornhill to deny; Lindsley Williams to deny by proxy; Charles R. Norris not voting, not having been present).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: MAY 9 1990

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UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

14829order/BHS18

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 14829

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a copy of the Order of the Board in the above numbered case, said Order dated MAY 9 1990, has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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A handwritten signature in black ink, appearing to read "ELC", is written over a horizontal line.

EDWARD L. CURRY
Executive Director

DATE: MAY 9 1990